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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,084	05/02/2002	Andrew Laitt	000026.00031	8099

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EXAMINER

DESAI, HEMANT

ART UNIT PAPER NUMBER

3721

DATE MAILED: 11/19/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/980,084

Applicant(s)

LAITT, ANDREW

Examiner

Hemant M Desai

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Specification***

1. The disclosure is objected to because of the following informalities: There are no heading, for example: "Summary of The Invention", Brief Description of The Drawing" etc. Applicant should delete "The invention....Claim 1.", page 2, line 4, because the Specification must include a written description of the invention in full, clear, concise and exact term and should not rely on the claims.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language, "wherein...cushioning." (claim 1, lines 6-8) renders the claim indefinite because there is no positive step set forth, which makes the claim language ambiguous. Also it is not clear whether the predetermined amount of air is trapped during the process of packaging and thus an inherent part of the process or it requires a separate step.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 7, 8, 12-13, 16-20, 22-23 and 26-27 rejected under 35

U.S.C. 102(b) as being anticipated by Davy (3199756).

Davy discloses a method of a method of packaging a brittle food-stuff (see col. 2, lines 32-33) comprising the steps of forming a tube (16, fig. 4), forming seal at top and bottom (19, fig. 4), feeding pre-determined amount of food (B, fig. 4) and forming a strip of sealed pouches (see figs. 5) of predetermined dimensions containing the food stuff (B) and inserting the strip of sealed pouches in a carton (E, fig. 5), which meets all the claimed limitations. Note that in Davy, containing air is an inherent part of the method.

Regarding claims 12-13, the sealing is by means of heat (sealing roller 18, fig. 4).

Regarding claims 17-20, the perforations (g, fig. 1) are formed between each pouch of the strip of pouches.

Regarding claim 22, the packaged brittle foodstuff produced by the method.

Regarding claim 23, it is inherent that the size of the pouch is greater than or equal to the volume of foodstuff to accommodate the foodstuff in the pouch.

Regarding claims 26 and 27, strip of filled pouches is folded at points between the pouches and inserted into the carton (see fig. 5).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-6, 9-11, 14-15 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davy (3199756).

Regarding claims 2-6 and 24-27, Davy discloses to insert strip of pouches into a carton. Davy does not disclose expressly that the sealed strip of pouches should be arranged in a certain configuration or single or double strip should be arranged in a carton.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to arrange the sealed strip of pouches in a certain configuration or single or double strip should be arranged in a carton because Applicant has not disclosed that by arranging the sealed strip of pouches in a certain configuration or by inserting single or double strips of sealed pouches in the carton provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore,

would have expected Applicant's invention to perform equally well with the way Davy discloses to insert the strip of pouches into a carton because both arrangements would perform equally well as far as the packaging of the sealed strip of pouches in the carton is concerned.

Therefore, It would have been an obvious matter of design choice to modify Davy to obtain the invention as specified in claims 2-6.

Regarding claims 9-11, for the same reasons, as mentioned above it would have been obvious matter of design choice to modify Davy to obtain the invention as specified in claims 9-11.

Regarding claims 14-15, Davy discloses paper, glassine or cellophane bag material. Davy does not disclose expressly the plastic or waxed paper. However, use of plastic or waxed paper for potato chips or any foodstuff is well known in the art at the time the invention was made to make the package moisture resistant. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the plastic or waxed paper in the method of packaging the foodstuff of Davy to make the package moisture resistant.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davy (3199756) in view of Bonerb (4658989).

Davy, as mentioned above, discloses all the claimed limitations, except for forming the pleat in the bags. However, Bonerg teaches to form the pleats in the bags to make the bags expandable (see col. 1, lines 63-65). Therefore it would

have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the pleats in the bags as taught by Bonerb in the method of packaging of Davy to make the bags expandable.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-20 and 22 have been considered but are moot in view of the new ground(s) of rejection.

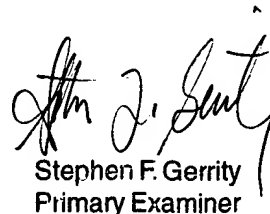
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5:30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Hemant M Desai  
Examiner  
Art Unit 3721

HMD

  
Stephen F. Gerrity  
Primary Examiner